

EXHIBIT “D”

IN THE STATE COURT OF CLAYTON COUNTY
STATE OF GEORGIA

RALPH GULLY

Plaintiff,

v.

BAHLBI TEFAY KAHSAY and TLM
TRANSPORT, LLC

Defendants.

CIVIL ACTION
FILE NO.: 2022CV02610

DEFENDANTS' NOTICE OF FILING NOTICE OF REMOVAL

COMES NOW, Defendants BAHLEBI TEFAY KAHSAY and TLM TRANSPORT, LLC (hereafter "Defendants"), by and through undersigned counsel, and hereby gives notice of the filing of a Notice of Removal of the above-styled civil action to the United States District Court, for the Northern District of Georgia, Atlanta Division. A copy of the Notice of Removal filed with the United States District Court is attached hereto as Exhibit "1". Pursuant to 28 U.S.C. § 1446(d), all future proceedings in this Court are stayed.

Respectfully submitted this 13th day of February, 2023.

MCMICKLE, KUREY & BRANCH, LLP

/s/ David C. Wright

ZACH M. MATTHEWS

Georgia Bar No: 211231

DAVID C. WRIGHT

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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the foregoing **DEFENDANTS' NOTICE OF FILING NOTICE OF REMOVAL** with the Clerk of the Court using the Odyssey e-Filing system, which will send a notification attaching same thereon to the following counsel of record:

Blake Fluevog
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Attorney for Plaintiff

Kristin L. Yoder
Cruser, Mitchell, Novitz, Sanchez, Gaston &
Zimet, LLP
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275 Scientific Drive
Peachtree Corners, GA 30092
kyoder@cmlawfirm.com
Attorney for Farmers Insurance Exchange

This 13th day of February, 2023.

/s/ David C. Wright

DAVID C. WRIGHT
For the Firm

EXHIBIT “1”

Notice of Removal Filed in Federal Court

**State Court Pleadings Previously Filed
Have been excluded from this Filing**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

RALPH GULLY

Plaintiff,

v.

BAHLBI TESFAY KAHSAY and TLM
TRANSPORT, LLC

Defendants.

CIVIL ACTION FILE NO.:

DEFENDANTS' NOTICE OF REMOVAL

COME NOW Defendants BAHLBI TESFAY KAHSAY and TLM
TRANSPORT, LLC, by and through counsel, and file this Notice of Removal as
follows:

1.

Plaintiff RALPH GULLY (hereinafter "Plaintiff") filed a civil action against
Defendants in the State Court of Clayton County, State of Georgia, Civil Action File
No. 2022CV02610, on November 23, 2022. A copy of the Complaint and all
pleadings filed in the State Court action are attached hereto as Exhibit "A".

Complete Diversity Jurisdiction Exists

2.

According to his allegations in the Complaint, Plaintiff is a citizen of the State of Georgia. *See*, Exhibit “A”, Complaint ¶ 1.

3.

At the time of the filing of the Complaint, Defendant Kahsay was, and currently is, a citizen and resident of the state of Texas, who presently resides at 8515 Park Lane, Apartment 404, Dallas, Texas, 75231.

4.

For purposes of diversity of citizenship, a limited liability company is a citizen of any state in which a member of the company is a citizen. *Rolling Greens MHP, L.P. v. Comcast SCH Holdings, LLC*, 374 F.3d 1020, 1022 (11th Cir. 2004).

5.

Defendant TLM Transport, LLC is a Texas limited liability company, which is both its state of incorporation and the state in which it maintains its principal place of business. 28 U.S.C. § 1332 (c) (1). TLM Transport, LLC’s registered agent is Bahlbi Kahsay, who maintains his registered office at 8620 Park Lane, Apt 1806, Dallas, Texas, 75231. TLM Transport, LLC’s principal place of business is 8620 Park Lane, Apt 1806, Dallas, Texas, 75231. *See* Exhibit “B”, TLM Transport Cert.

of Formation. TLM Transport, LLC is a corporate resident of Texas. Accordingly, TLM Transport, LLC is a citizen of the State of Texas. Defendant TLM Transport, LLC was served on January 14, 2023. *See* Affidavit of Service included in Exhibit “A”. TLM Transport, LLC is gathering its LLC membership information and will provide same via its Certificate of Interested Persons and Corporate Disclosure Statement in the near future.

6.

Complete diversity of citizenship exists between Plaintiff and the Defendants for purposes of 28 U.S.C. § 1332 (c) (1).

The Amount in Controversy Exceeds \$75,000.00

7.

Plaintiff seeks judgment against the named-Defendants for sums in excess of \$75,000.00, exclusive of interest and costs. In his Complaint dated November 23, 2022, Plaintiff asserts he incurred “medical bills in an amount of \$35,167.40 *and his medical treatment is ongoing*” and that Plaintiff “will require additional and ongoing medical treatment” *See*, Exhibit “A”, Complaint ¶¶ 24-25 (emphasis added). In email correspondence dated February 8, 2023, Plaintiff’s counsel advised that Plaintiff’s medical expenses are “\$96,558.12 to date, but he’s in continued care.” *See* Exhibit “C”, 2/8/23 email from B. Fluevog. Accordingly, the amount in

controversy exceeds \$75,000.

Removal is Timely and Proper

8.

With respect to removal on the basis of diversity jurisdiction, this removal is timely because it has been filed within thirty (30) days of Defendant TLM Transport, LLC being served. See, Fed. R. Civ. P. 6(a)(1)(C). This Notice of Removal is also timely because it is filed within thirty (30) days after receipt by Defendant TLM Transport, LLC of a copy of the initial pleading setting forth the claim upon which this action is based. 28 U.S.C. § 1446(b).

Venue is Proper in the Northern District

9.

The foregoing action is properly removable to this Court pursuant to 28 U.S.C. §§ 1441(a), 1446(a) and 1446(b), and 1332(a) because there is complete diversity of citizenship between Plaintiffs and Defendants, and the matter in controversy exceeds the sum of \$75,000.00.

10.

The United States District Court for the Northern District of Georgia is the proper venue for removal under 28 U.S.C. § 1441(a) because the Northern District, Atlanta Division, encompasses Clayton County. *See* 28 U.S.C. § 90(a)(2).

The Unanimity Requirement is Met Here

11.

The Supreme Court has construed the removal statutes to require all defendants in a case to consent to removal, thus creating the so-called “unanimity requirement.” See Russell Corp. v. Am. Home Assurance Co., 264 F.3d 1040, 1050 (11th Cir. 2001)(citing Chicago, Rock Island, & Pac. Ry. Co. v. Martin, 178 U.S. 245, 247-48 (1900)). All Defendants consent to this Notice of Removal.

Removal is Proper

12.

No previous application for the relief sought herein has been made to this or any other Court.

13.

Good and sufficient defenses to Plaintiff’s claims exist.

14.

Within thirty (30) days after service on Defendant, notice is hereby given in accordance with 28 U.S.C. § 1446 and Rule 11 of the Federal Rules of Civil Procedure of the removal of said action to this Court.

15.

Defendant has given written notice of the filing of the Notice of Removal to

Plaintiff and to the Clerk of the State Court of Clayton County. A copy of the Notice of Filing Notice of Removal is attached hereto as Exhibit “D”.

WHEREFORE, it is hereby requested that this Court grant the removal of this case to the United States District Court for the Northern District of Georgia, in which district this suit is pending.

Respectfully submitted this 13th day of February, 2023.

McMICKLE, KUREY & BRANCH, LLP

/s/ David C. Wright

ZACH M. MATTHEWS

Georgia Bar No.: 211231

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing pleading complies with the font and point selections approved by the Court in Local Rule 5.1C. This brief has been prepared in Times New Roman font, 14 point.

/s/ *David C. Wright*

DAVID C. WRIGHT

For the Firm

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2023 I electronically filed **DEFENDANTS' NOTICE OF REMOVAL** with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Blake Fluevog
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/s/ David C. Wright
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